

IN THE
SUPREME COURT OF MISSOURI

DUPLICATE
OF FILING ON

MAY 24 2004

STATE OF MISSOURI ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General,
Relator,

IN OFFICE OF
CLERK SUPREME COURT

No. **086013**

vs.

HONORABLE MATT BLUNT,
Secretary of State for the State of Missouri

Respondent.

**MOTION TO DISPENSE WITH TIME FOR RESPONSE
and for
IMMEDIATE ISSUANCE OF A PEREMPTORY OR
PERMANENT WRIT OF MANDAMUS**

Relator, the Attorney General of Missouri, moves, pursuant to Supreme Court Rule 84.24(c), for the court to dispense with the requirement that the writ not issue prior to the expiration of the ten days normally allotted respondent to file suggestions in opposition to the issuance of the writ. The Attorney General requests that this Court **immediately issue a peremptory writ** because, failing the same, the citizens of Missouri face irreparable harm.

Whenever in the judgment of the court the purpose of the writ would be defeated if the time limits set forth in Rule 84.24(c) or

84.24(d) are enforced, the court, on motion of the petitioner or relator or on its own motion, may shorten the time for filing suggestions in opposition to the petition or dispense with such time limits altogether, and it may issue the writ upon the expiration of the time as so shortened or, if the court dispenses with such time, immediately.

Missouri Rule of Civil Procedure 84.24(e).

Respondent has taken the position that unless the steps specified in § 116.160 are completed by Tuesday, May 25th, the Governor's proclamation of an August 3 special election, made pursuant to Missouri Constitution Article XII, Section 2(b), will be ineffective. Though Respondent has agreed that the steps *can* be completed in time, he has refused to begin – hence the need for a writ of mandamus. If the Court delays at all, the matter cannot be addressed in time to meet Respondent's deadline.

Thus Relator asks the Court to immediately issue a peremptory writ, without waiting for a response (or after allowing a response by the end of the day today), requiring that the steps set out in § 116.610 be taken in time for a ballot to be certified for an August 3, 2004, special election, and that the Court, having thus preserved the Governor's authority temporarily through the issuance of such a peremptory writ, take up the matter on the merits as

quickly as possible and grant a permanent writ, ensuring that Respondent will not deem the action to have been void and move to revise the August ballot so as to delay a vote on the proposed amendment. There is no reason to delay briefing; this matter – which involves only legal argument, not factual dispute – has already been addressed by the same parties and attorneys in the Circuit Court for Cole County and the Missouri Court of Appeals, Western District. The matter may be adequately presented on the petition and suggestions by Relator and Respondent; no briefs should be necessary. If the Court deems briefs to be required, Relator could file and serve by hand within 2 days, Respondent could be required to file within another two days, and the matter could be fully briefed and ready for argument and decision within a week. But again, because of the May 25 deadline, such a briefing schedule is permissible *only* if the Court grants a33 peremptory writ ensuring that the proposed amendment is on the certified ballot.


In the alternative, should the Court wish to address the matter in a single step, Relator also asks that the time allowed for filing in opposition to petition be shortened, and that the matter be addressed on the merits immediately. Again, Respondent has already addressed the matter; there is no reason for delay in briefing. The response should be required today, and the matter be taken up on the papers or set for argument in time for a final

disposition by late morning tomorrow, May 25 – giving the officials involved in preparing the ballot documents (Relator, Respondent, and the State Auditor) the afternoon to complete their work.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

PAUL C. WILSON
Assistant Attorney General
and Deputy Chief of Staff

A handwritten signature in black ink, appearing to read "James R. Layton", is written over the printed name and title of the State Solicitor.


JAMES R. LAYTON
State Solicitor
Missouri Bar No. 45631

P.O. Box 899
Jefferson City, MO 65102
(573) 751-3321
Fax (573) 751-2203

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by hand delivery or U.S. Mail, postage prepaid, on this 24th day of May, 2004, to:

Terry Jarrett
Office of the Secretary of State
State Information Center, 600 W. Main
Jefferson City, MO 65101
(573) 526-1272
Fax: (573) 526-4903


Assistant Attorney General